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IN THE

# Supreme Court of the United States

NATIONAL GEOGRAPHIC SOCIETY;
NATIONAL GEOGRAPHIC ENTERPRISES, INC.;
AND MINDSCAPE, INC.,
*Petitioners,*

v.

JERRY GREENBERG AND IDAZ GREENBERG,
*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

## BRIEF *AMICI CURIAE* OF THE AMERICAN LIBRARY ASSOCIATION, THE ASSOCIATION OF RESEARCH LIBRARIES, THE AMERICAN ASSOCIATION OF LAW LIBRARIES, AND THE MEDICAL LIBRARY ASSOCIATION IN SUPPORT OF PETITIONERS

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## INTERESTS OF *AMICI CURIAE* [1]

This brief *amici curiae* in support of Petitioners is submitted by the American Library Association, the Association of Research Libraries, the American Association of Law Libraries, and the Medical Library Association ("*Amici*") pursuant to Rule 37 of the Rules of this Court. *Amici* urge that the Court grant the requested writ of certiorari and reverse the judgment of the U.S. Court of Appeals for the Eleventh Circuit.

The **American Library Association** ("ALA") is a nonprofit educational organization of approximately 61,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, and specialized libraries. ALA is dedicated to the improvement of library and information services and the public's right to a free and open information society.

The **Association of Research Libraries** ("ARL") is a nonprofit association of 123 research libraries in North America. ARL's members include university libraries, public libraries, government and national libraries. Its mission is to shape and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to and effective uses of recorded knowledge in support of teaching, research, scholarship and community service.

The **American Association of Law Libraries** ("AALL") a nonprofit educational organization with over 5,000 members nationwide. AALL's mission is to promote and enhance the value of law libraries to the legal and public communities, to

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[1] Letters from all parties consenting to the filing of this brief have been filed with the Clerk of this Court. No counsel for a party authored this brief in whole or in part, and no person or entity other than amici curiae, or their counsel, made a monetary contribution to the preparation or submission of this brief.

foster the profession of law librarianship, and to provide leadership in the field of legal information and information policy.

The **Medical Library Association** ("MLA") is a professional organization of more than 5,000 institutions and individuals in the health sciences information field. MLA members develop programs for health sciences information professionals, and health information delivery systems, foster educational and research programs for health sciences information professionals, and encourage an enhanced public awareness of health care issues.

* * * * *

*Amici* are organizations devoted to representing the interests of institutions and professionals responsible for collecting and preserving historical, scholarly and other records, including periodicals and other collective works, and for making these materials available to researchers and the public at large. These institutions and individuals assist their patrons in researching, retrieving and using these materials in traditional paper media, in microform, in CD-ROM and other multi-media formats and via online services and the Internet. A significant part of their mission is to make available reliable, accessible, comprehensive repositories of back issues of newspapers, magazines, journals and other periodicals. Many institutional and individual members of *amici* use the very CD-ROM product at issue in this case. For these reasons, *amici* submit this brief to assist the Court's understanding of the practical implications of the issues at stake in this case.

## SUMMARY OF ARGUMENT

The Eleventh Circuit held in this case [2] that Section 201(c) of the Copyright Act (17 U.S.C. §201(c)) does not confer upon

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[2] The opinion below and appendices thereto are reproduced in the "Appendix" to the "Petition for Writ of Certiorari" filed with this Court. Petition Appendix ("App." ) 1a-21a.

Petitioners the privilege of reproducing and distributing the copyrighted works of freelance photographers as part of a CD-ROM product ("*The Complete National Geographic*"). In that product, however, the freelance photographs are perceptibly reproduced and distributed as part of the original collective works, or revisions thereof, in which they first appeared. This ruling is therefore inconsistent with the Copyright Act of 1976, as amended (the "Act"), and with this Court's recent decision in *The New York Times Co., Inc. v. Tasini*, 121 S. Ct. 2381 (2001) ("*Tasini*"). The circuit court's ruling deems unlawful what is effectively the mere conversion of intact periodicals from one medium to another. It cannot be squared with a "media neutral" copyright system. It is also likely to impact negatively libraries and their patrons for many years to come.

This Court's jurisprudence has recognized that a fundamental goal of copyright law is to promote "broad public availability of literature, music, and the other arts" through a system of private reward to authors. *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975). At base, its decision in *Tasini* was about fair compensation to individual authors when commercial electronic database publishers reused articles without additional permission to create new collective works and sell articles on an individual basis. Thus, it protected the author's private reward pursuant to the balance that Congress struck in enacting Section 201(c) of the Act.

The instant case, by contrast, is ultimately about the other side of that balance. It is about the ability of collective work owners covered by Section 201(c) to take advantage of new technologies to more broadly distribute those creative works to the public. The Eleventh Circuit's flawed decision upsets that balance. Carried to its logical conclusion, the ruling raises the specter of Section 201(c) being frozen in time, exclusively applying to older, non-digital technology to the detriment of research, scholarship and learning. The Eleventh Circuit was

certainly cognizant of the issues of public access raised by this case. It suggested ways to construct a remedy in this case that would protect both the interest in fairness to freelance photographers and the public interest in access to their works in the context of the Petitioners' CD-ROM product. But in the final analysis, no remedy whatsoever appears to be necessary in this case because no wrong has been committed.

The Eleventh Circuit's decision is legally erroneous because it fails to focus on the Petitioners' acts of reproducting and distributing the photographers' individual works "as part of" the original collective works or permissible revisions thereof, and disregards how the works are "presented to, and perceptible by, the user. . . ." *Tasini*, 121 S. Ct. at 2390. Rather, the appeals court finds impermissible under Section 201(c) the combination of digital facsimiles of entire collective works with computer software that will enable users to search and perceive them with the aid of a machine or device.[3] This is an outcome not mandated by the statute. It is squarely inconsistent with the "media neutral" terms of the relevant portions of the Act. It is also contrary to this Court's holding in *Tasini* that the proper focus of the inquiry under Section 201(c) is how the product "perceptibly presents the author's contribution" to the product's end-user. *Id.* at 2393. From the end-user's perspective, the product at issue in this case is essentially "a mere conversion of intact periodicals (or revisions of periodicals) from one medium to another." *Id.* at 2392. The product at issue in this case embodies digital fixations that are materially the same as the type of analog microfilm collections that this Court has already observed are permissible under Section 201(c). *Id.* at 2391-92. The freelance photographs are

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[3] The Eleventh Circuit opinion refers to the digital facsimiles of the magazines comprising *The Complete National Geographic* as the "Replica." It collectively refers to the search engine and the program for compressing and decompressing the digital images comprising the Replica as the "Program". App. 3a-5a.

perceptible to the end users of this product "as part of" the original collective works, just as they are to the end-users of a roll of microfilm. The software elements of the product function in a manner similar to a lens, light, and knobs used to view and search a microfilm copy of a work.

As a consequence of the flaws in its legal analysis, the Eleventh Circuit has issued a decision that materially and adversely affects libraries and their patrons in a number of ways. If this decision stands, it would inhibit the dissemination of collective works via digital and electronic media that involve combining digital facsimiles of complete collective works with software that enables a user to perceive them. This would thwart broader public availability not only of popular works like those of Petitioner National Geographic Society, but also less widely accessible periodicals. Digital and electronic media also have functionality that exceeds traditional analog media as well as the potential for greater utility in the future as archival and preservation media. This ruling stymies the adoption and evolution of such useful technologies. Finally, CD-ROM and online versions of newspapers and magazines can greatly reduce the space requirements of many libraries. Their use can often improve public access to greater amounts and sources of materials. The Eleventh Circuit's erroneous decision needlessly deprives the public of that benefit.

## ARGUMENT

The Eleventh Circuit held that Section 201(c) of the Copyright Act does not confer upon Petitioners the privilege of reproducing and distributing the copyrighted works of freelance photographers in and through a certain CD-ROM product. Although superficially similar to this Court's ruling in *Tasini* (i.e., both courts ruled that the publishers before them had no right under Section 201(c) to reproduce freelance contributions in certain electronic contexts), the Eleventh Circuit's ruling is, in fact, fundamentally at odds with this Court's decision. In

*Tasini*, the Court ruled that the Section 201(c) privilege did not apply to the works of freelance authors whose works had been reproduced in commercial online electronic databases and CD-ROM products and distributed to the public in a manner other than "as part of" the types of collective works specified by Section 201(c). The Eleventh Circuit's decision (which was issued before *Tasini* was decided) holds that freelance photographic contributions that are reproduced and distributed as part of digital facsimiles of complete issues of magazines embodied in CD-ROMs are not permissible under Section 201(c). It reaches this conclusion even though the CD-ROM versions appear to the end user to be mere conversions of the intact periodicals from the print medium to a digital medium.

It may be unusual for the Court to face multiple calls, in such quick succession, to construe a seemingly arcane provision of the Copyright Act. However, *amici* believe that the practical consequences of the Eleventh Circuit's decision may be even more far-reaching than the decision in *Tasini* in terms of the impact on the public availability of copyrighted works and the development of new media collections. This Court's review will therefore be particularly important for publishers of collective works and users of collective works nationwide. This Court could simply vacate and remand the Eleventh Circuit's decision and instruct it to re-visit its decision in light of *Tasini*. This might give the lower court a chance to correct the flaws in its decision.[4] But that decision rests in substantial

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[4] In addition to the issues discussed more fully in this brief, other aspects of the Eleventh Circuit's opinion are analytically questionable. For instance, in its fair use analysis concerning the opening audiovisual sequence in which a Respondent's magazine cover photograph is depicted, the court appears to have weighed the transformative nature of the Petitioners' use of the photo *against* a finding of fair use. App. 14a. This Court's precedent clearly indicates precisely the opposite result. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994) (the goal of copyright is generally furthered by the creation of transformative works). *Amici* take no position as to whether, given a proper application of Section 201(c), the fair

part on reasoning that would altogether bar application of Section 201(c) in a digital environment, even if the product in question otherwise met all the requirements of Section 201(c). The Eleventh Circuit's flawed rationale goes beyond the issues addressed by this Court directly in *Tasini* and would be expected to persist in a subsequent appellate court decision. Thus, the issues presented herein would be likely to be presented to this Court again in the near future. It would therefore be more efficient, and of greater public benefit, for the Court to address them directly now.

## I. THE ELEVENTH CIRCUIT'S DECISION IS NOT ONLY CONTRARY TO SECTION 201(C) AND THIS COURT'S OPINION IN *TASINI*, IT ALSO FINDS INFRINGMENT BASED ON A MERE CONVERSION OF WORKS INTO A MEDIUM REQUIRING A MACHINE OR DEVICE TO PERCEIVE THEM

### A. This Case Involves A Product Distinguishable From Those At Issue In *Tasini*

As construed by this Court, it is permissible under Section 201(c) for the owner of a collective work copyright to

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use issue should have been resolved against Petitioner in the summary judgment context, or if the fleeting use of this photograph is so *de minimis* that it should not be actionable. At the very least, the fair use analysis should be undertaken anew in light of an understanding that Petitioners' principal use of the photographs in the CD-ROM product was proper under Section 201(c). Likewise, the Eleventh Circuit's holding that Petitioners perpetrated a "fraud" on the Copyright Office (App. 11a-12a), should be reconsidered in the context of a correct application of Section 201(c), after full briefing by the parties. Because the ruling implicates issues of national uniformity in matters of copyright registration, the views of the U.S. Copyright Office should also be fully considered. Finally, the appeals court speaks in sweeping language of the "constitutionally-secured rights of the author" (App. 9a) with little meaningful analysis or discussion. If necessary to a decision in this case, this topic would also merit a more extensive discussion and consideration of diverse viewpoints.

reproduce an exact facsimile of the complete collective work, whether in paper or other forms, such as microfilm and microfiche. *Tasini*, 121 S. Ct. at 2391-92. This would be true even if multiple, exact reproductions were combined into a single package in which several entire issues of a series of collective works would be distributed as a unit (like traditional microfilm). *Id.* at 2391. When one distributes the constituent works in this manner, one is both reproducing and distributing them "as part of" the original collective works, as provided for in Section 201(c), including all of the selection, coordination, and arrangement of the original collective works. These practices, which are not problematic under this Court's decision in *Tasini* when applied to traditional media, become impermissible under the Eleventh Circuit's decision below if the exact facsimile is in digital form with supporting software. This conclusion is not required by or consistent with *Tasini*.

In *Tasini*, this Court was faced with three different electronic database products and held that none of them complied with the requirements of Section 201(c). One product was the NEXIS online database in which millions of articles in electronic file format from thousands of periodicals had been reproduced and made available online to users, in effect, on an individual basis. *Tasini*, 121 S. Ct. at 2392. The other two were CD-ROM products. One of these, known as "GPO," was image-based. It showed each article exactly as it appeared on the printed page, *but the CD-ROM contained articles from approximately 200 publications or sections of publications. Id.* The other CD-ROM product contained only the *New York Times*, *but it did not have the original formatting or accompanying images from the original publication. Id.* Both of the CD-ROM products in *Tasini* displayed the articles *in such a way that they were not linked to other articles appearing in the original print publications* and the user who wished to see other pages of the original collective work could not simply "flip" to them. A new search was required. *Id.* at n.2. These characteristics

destroyed the claim that the reproductions and distributions of the articles therein were "as part of" qualifying collective works.

In deciding that these products were not permissible under Section 201(c), the Court's focus in *Tasini* was on the freelance articles "as presented to, and perceptible by, the user" of the commercial electronic databases before it. *Id.* at 2390. The Court's inquiry was "whether the database itself perceptibly presents the author's contribution as part of" the collective work or revision thereof. *Id.* at 2393. The products in *Tasini* presented freelance articles to users "clear of the context provided either by the original periodical editions or by any revision of those editions." *Id.* at 2390-91. The products did not perceptibly reproduce and distribute the freelance articles "as part of" the original periodicals or permissible revisions. *Id.* at 2391. Significantly, the products offered users individual articles, not intact periodicals, and did not involve "a mere conversion of intact periodicals (or revisions of periodicals) from one medium to another" as happens with microfilm. *Id.* at 2392.

Turning to the product before the Eleventh Circuit below, *The Complete National Geographic* is fundamentally a mere conversion of intact print periodicals into the medium of CD-ROMs. The freelance photographs alleged to be infringed appear in the CD-ROM versions *in the exact positions* in which they appeared in the original print version of the magazines. The photographs are presented in the context of the full, original issues (even with original advertising). App. 4a. In addition, a user of the CD-ROM can "flip" to other articles and pages in the digital facsimile of an issue in the same order in which those articles and pages were originally presented in the printed editions. Although there are 100 years of issues reproduced on multiple discs, *National Geographic* is the only periodical that appears in the CD-ROM version. A user encounters very few materials that have been added to the

CD-ROMs that are not digital facsimiles of the original magazines or software that permits viewing them and searching them for specific issues and articles. These added materials perceptible to users are apparently a few short advertising videos, a start-up video montage that lasts for a few seconds, and a chronological table of contents.[5]

Thus, the freelance photos are reproduced and distributed to the public "as part of" the original collective work or revision of the original collective work. The freelance photographs are not being made available on a piecemeal basis or being sold a la carte out of a database that combines multiple periodicals. *Cf. Tasini*, 121 S. Ct. at 2392. The photographs are not stored and retrieved "separately within a vast domain of diverse texts" (*id.* at 2393) and the reproduction and distribution of the photographs in the context of digital facsimiles of the original periodicals does not effectively override the photographers' exclusive right to control the individual reproduction and distribution of each photograph. *Cf. id.* In all material regards, the photographs are perceptibly reproduced as part of the digital facsimiles of the original *National Geographic* magazines. These CD-ROMs are therefore materially distinguishable from each of the products at issue in *Tasini*.

### B. The Flaws In The Eleventh Circuit's Analysis

The Eleventh Circuit's decision fails to reflect the relevant distinctions between the product at issue before it and those at issue in *Tasini*, in part, because that court issued it before gaining the benefit of this Court's analysis articulated in *Tasini*.

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[5] For purposes of Section 201(c) these additional elements ought to be deemed merely incidental and of no significance to the status of the CD-ROM as a qualifying reproduction. They do not alter the essence of the digital facsimiles embodied in Petitioners' CD-ROM and have no separate value to the product's user. They are of no greater significance than putting a new cover on a book or adding a table of finding aids to the head of a microfilm roll.

But the appeals court decision contains an additional flaw in its reasoning. The opinion suggests that it is impermissible under Section 201(c) for a collective work owner to combine into a single product the digitized text and images of a complete collective work with software that enables users to perceive and search the collective work with the aid of a computer. Under the Eleventh Circuit's reasoning, the addition of search and access software to a product containing digitized periodicals is, in effect, *per se* impermissible under Section 201(c). The court claimed in its opinion not to decide that issue. App. 11a, n.12. However, the software issue is clearly the dominant element of its analysis. *Id.* Consistently applying the appeals court's ruling would mean that no publisher could rely on Section 201(c) to release a collection of its works in CD-ROM or digital format because of the use of supporting software. *Amici* believe this analysis to be an error that could materially diminish public access to works and reduce the dissemination of collective works reproduced and distributed in digital form in a manner consistent with Section 201(c) as explained in *Tasini.*

In *The Complete National Geographic*, the original collective works that are reproduced in digital facsimiles are not themselves changed by the conversion from paper to CD-ROM. In this regard, there is merely a transformation from analog to digital media. The necessity of using an additional "work", i.e., another computer program, to view the unchanged collective works should be analytically irrelevant because under the Act, a copy of a work that is perceptible without a machine or device stands on equal footing with one that does. The Act provides that copyright protection adheres to works of authorship "fixed in *any* tangible medium of expression, *now known or later developed*, from which they can be perceived, reproduced, or otherwise communicated, either directly or *with the aid of a machine or device*." 17 U.S.C. §102(a) (emphasis added). *See also* 17 U.S.C. §101 ("copies" defined as material objects in which a work "is fixed by *any* method *now known or*

*later developed*, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or *with the aid of a machine or device.*") (emphasis added).

The product at issue in this case embodies digital fixations that are materially similar to the type of analog microfilm collections that this Court has already observed are permissible under Section 201(c).[6] The freelance photographs are perceptible to the end users of this product "as part of" the original collective works, just as they are to the end-users of a roll of microfilm. The end-user encounters the software component of the product, in effect, only as part of the "machine or device" that permits the collective work to be perceived. It is functionally analogous to a lens, light, and the knobs on a microfilm viewer. It is not perceptibly presented to the end user as matter that has been added to the original collective works.

Even if the product at issue here were not to be viewed as embodying mere reproductions of the original collective works, the addition of these software elements to the digital medium could be viewed as the creation of a permissible "revision" under Section 201(c). The concept of a "revision" can encompass some level of addition and/or deletion of copyrightable matter, and nothing in the Act or its legislative history suggests otherwise. If the "final" edition of a traditional print newspaper contained additional photographs and text—both qualifying as additional copyrightable works—that were not included in the "early" edition, this could be fairly characterized as being a

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[6] "Microforms typically contain continuous photographic reproductions of a periodical in the medium of miniaturized film. Accordingly, articles appear on the microforms, writ very small, in precisely the position in which the articles appeared in the newspaper." *Tasini*, 121 S. Ct. at 2391-92. "True, the microfilm roll contains multiple editions, and the microfilm user can adjust the machine lens to focus only on the Article, to the exclusion of surrounding material. Nonetheless, the user first encounters the Article in context." *Id.*

permissible "revision." Likewise, the addition of copyrightable matter that is not even perceptible to an end user as matter added to the collective work being viewed, but encountered as part of the "machine or device" that enables the user to view the collective work, could be fairly deemed to be a "revision" of the collective work.

## II. THE ELEVENTH CIRCUIT'S DECISION WILL HAVE ADVERSE EFFECTS ON THE LIBRARY COMMUNITY AND USERS OF COLLECTIVE WORKS

At base, *Tasini* was about fair compensation to individual authors where commercial electronic database publishers reused articles without additional permission, created new collective works and sold articles on an individual basis. By contrast, this case is about the other side of the Copyright Act's balance between the private reward to authors and the public's access to creative works. It is about the ability of collective work owners covered by Section 201(c) to take advantage of new technologies when their use is consistent with the statutory requirements. For *amici*, the Eleventh Circuit's decision is ominous. Under it, no collective work reproduced or distributed via CD-ROM, online technology, or other new technology requiring additional software to facilitate viewing or searching could, as a practical matter, ever qualify for the Section 201(c) privilege even if the product met the statutory criteria in all other respects. The ruling therefore inhibits the dissemination of collective works via digital and electronic media.

The sweeping implication of the Eleventh Circuit's decision would, if left undisturbed, thwart broader public availability not only of well-disseminated works like those of Petitioner National Geographic Society. It would also frustrate broader public availability of more obscure, less widely accessible magazines, newspapers, scholarly journals and other periodicals. These collective works could potentially be made accessible to a broader segment of the population, but not if

digital and electronic media compilations of them are effectively *per se* impermissible under Section 201(c), as they appear to be under the Eleventh Circuit's decision. Moreover, such products make it much easier to access information resources, and make possible the retrieval and use of data in powerful ways not possible with analog media. Thus, such products are of enormous value to library patrons, particularly scholars and historians.

It bears noting that although the petitioners in *Tasini* voiced similar public access concerns in briefing that case, the Court apparently found that those concerns could not override the language of Section 201(c) as applied to the specific products at issue in that case. The Court rightly recognized that the question of continued public availability of these works could be addressed in the context of the remedial phase of the case. *Tasini*, 121 S. Ct. at 2393-94. But in this case, the product is distinguishable from those in *Tasini* and a fair application of the statute requires a different outcome. There is no need for a remedy because the collective work owner has committed no wrong against the freelance contributors. The product at issue here fully qualifies for application of the privilege under Section 201(c). Thus, neither the remedial issues nor the public access issues implicated by the Eleventh Circuit's decision need even arise.[7]

Digital and electronic media also have the potential for greater utility in the future as archival and preservation media. Petitioners' CD-ROM products and analogous online products

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[7] The Eleventh Circuit's opinion contained some insightful comments at its close in recognizing that it is appropriate to consider alternatives to injunctive relief, "such as mandatory license fees, in lieu of foreclosing the public's computer-aided access to this educational and entertaining work." App. at 16a-17a. This Court recognized similar concerns in *Tasini*. 121 S. Ct. at 2393-94.

are not electronic "archives" in the true sense of the word.[8] Nor are the particular electronic media that have been at issue here or in *Tasini* now able to serve a substantial preservation function.[9] However, other digital and electronic media more suitable to those purposes may develop in the future. They may entail reproducing a complete, digital facsimile of a collective work in combination with computer software (that is itself comprised of one or more separate "works" under the Act) that enables users to view and search the collective work with the aid of a machine or device. Indeed, libraries make significant investments in developing technologies with the goals of improving both user access and long-term preservation

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[8] For research libraries, for whom preservation and access are central to their mission, retention of paper and microfilm continues because these are the only proven preservation media. Indeed, a growing number of research libraries (almost eighty) rely upon offsite storage facilities to accommodate the burgeoning growth of their physical collections. Even research libraries that are investing heavily in electronic resources are approaching the replacement of their paper resources with caution. *See* Peter Allison & Carolyn Mills, *Library Investing Heavily in Electronic Journals*, UCONN Libraries, Feb./Mar. 2001, at 6.

[9] Electronic media may have some advantages over other media for preservation purposes and may be the only viable means for preserving certain fragile material, but electronic media "may introduce new preservation problems of their own." *Commission on Physical Sciences, Mathematics, and Applications, National Research Council, LC21: A Digital Strategy for the Library of Congress* at 6-2 (2000). In fact, digital reformatting is not yet considered a standard preservation strategy, as it is neither free from physical deterioration nor hardware and software obsolescence. Abby Smith, Council on Library and Information Resources, Why Digitize? at 3-7 (1999). Certain digital media, like magnetic tape, are inherently unstable and can degrade within a decade, *id.*, and their use as archival media presents significant logistical hurdles. *See* 36 C.F.R. § 1234.30 (regulations of National Archives and Records Administration on maintenance of electronic records storage). Even so, magnetic tape remains the archival choice over CD-ROMs, which are not at this time considered an archival medium.

capabilities. Accordingly, the decision below stymies the adoption and evolution of such media to the detriment of the public in both regards.

Finally, CD-ROM and online versions of newspapers and magazines now—and eventually other products yet to evolve—can greatly reduce the space requirements of many libraries. Thus, if this decision stands, it would have serious, adverse effects on space requirements of such institutions and potentially increase their costs. This has the collateral effect of reducing the amount of material and variety of sources available to library patrons. It is not an outcome that Section 201(c) requires and therefore constitutes an additional, gratuitous harm to libraries and their patrons.

## CONCLUSION

For the foregoing reasons, this Court should grant the writ of certiorari and the judgment of the court of appeals should be vacated and reversed.

Respectfully submitted,

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